

(2004) 06 CAL CK 0071

In the Calcutta High Court

Case No : Writ Petition No. 16260 (W) of 2003

Arambagh Paper Mills Private Ltd. and Others

APPELLANT

Vs

The Board for Industrial and Financial Reconstruction and
Others

RESPONDENT

Date of Decision : 11-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 15(1), 22A(4), 33, 4

Citation : (2004) 3 CALLT 132 : (2005) 128 CompCas 364 : (2005) 59 SCL 581

Hon'ble Judges : Subhro Kamal Mukherjee, J

Bench : Single Bench

Advocate : Soumendra Nath Mukherjee, Ratnanko Banerjee and Jayati Choudhury, for the Appellant; Sailendra Narayan Patra Bhatta, for the Respondent No. 3, S. Sarkar, for the Respondent No. 4 and A.K. Dhandhanian and Amiya Kumar Sur for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India, inter alia, challenging an order dated September 30, 2003 passed by the Board for Industrial and Financial Reconstruction, Bench-II, in Case No. 225 of 2000.

2. By the order impugned the said Board dismissed the reference under Sub-section (1) of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 as time barred.

3. On September 27, 1999 the audited accounts of the company for the financial year 1999-2000 were adopted at the annual general meeting of the company.

4. On May 17, 2000 the directors of the company in the board meeting, inter alia, resolved, after considering the audited accounts of the company, that a reference under Sub-section (1) of Section 15 of the said Act of 1985 should be

made to the said Board.

5. Consequently, on June 28, 2000 the company made a reference to the said Board, which was received by the said Board on July 10, 2000. The said reference was registered as Case No. 225 of 2000 (II).

6. On February 26, 2001 the Board took up the said reference for hearing, inter alia, for determination of the sickness of the company. The Board enquired from the representative of the company as to why the said reference was not filed with the Board within the stipulated period of sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company became a sick industrial company. However, the Board appointed the State Bank of India as the operating agency under Sub-section (2) of Section 16 of the said Act of 1985 to conduct a special investigative audit and to enquire into the issues as to whether the company had adopted prudent accounting systems and accounting standards as stipulated in law. The Board, also, issued a show cause notice to the promoters/company individually to explain as to why they had failed to submit their reference to the Board within the stipulated period. It was made clear that if no satisfactory reply would be received, the Board would decide further in the matter in accordance with Section 33 of the said Act of 1985.

7. Pursuant to the aforesaid directions of the Board dated February 27, 2001, the Registrar of the Board by a letter dated March 22, 2001, inter alia, asked the promoters/company individually to submit their explanations as to why they had failed to submit their reference to the Board within the stipulated period. It was threatened that if no satisfactory reply would be received within fifteen days, the Board would decide further in the matter in accordance with Section 33 of the said Act of 1985.

8. On July 10, 2001, the company submitted its explanation, in reply to the said show cause notice, stating that due to lack of knowledge and experience of the promoters/company, the reference could not be filed within the stipulated period of time. The company sought for condonation of delay in making the reference. It was stated, further, that the delay in making the reference was unintentional and was due to ignorance and lack of knowledge on the subject.

9. On December 20, 2002 again a show cause notice was issued by the Registrar of the Board asking the directors/promoters of the company to explain as to why the reference should not be dismissed as time barred.

10. On January 18, 2003 the company filed its reply to the said show cause notice, inter alia, stating that as an enquiry under Sub-section (2) of Section 16 of the said Act of 1985 was ordered by the Board and was conducted by the operating agency, the reference could not be dismissed as time barred at the belated stage. It was, further, stated by the company that due to ignorance and lack of knowledge they could not come to the Board within the stipulated period and prayed for condonation of delay.

11. By the order impugned dated September 30, 2003 the Board dismissed the said reference as time barred holding, inter alia, that the provisions for making reference under Sub-section (1) of Section 15 of the said Act of 1985 was a mandatory provision requiring the company to make the reference within the stipulated time. Since such reference was not filed within the stipulated time, the reference was liable to be dismissed as time barred inasmuch as the Board had no power to condone the delay in filing such reference as prayed for by the company in its reply dated January 18, 2003.

12. Being aggrieved the company has come up before this Court with this writ application challenging the said order dated September 30, 2003.

13. Mr. Soumendra Nath Mukherjee, learned senior advocate, appearing in support of the writ petition, submits that the Board is wrong in dismissing the reference as time barred inasmuch as the Board misconstrued the provisions of the said Act of 1985. Mr. Mukherjee submits that the Board may resort to the provisions of Section 33 of the said Act of 1985 for taking penal actions for not filing the reference within the stipulated period of time, but the reference cannot be dismissed as incompetent.

14. Mr. Dhandhanian, learned advocate, appearing for the respondent No. 5, on the contrary, supports the order of the Board and submits that as the reference was not filed within the stipulated period of time, the Board was right in rejecting the reference. Mr. Dhandhanian submits that when the statute has prescribed a specific period for making the reference, such time can never be extended on equitable considerations inasmuch as the provisions of a statute have to be given their strict grammatical meaning. Mr. Dhandhanian in this connection cites the decision in the case of *Bootamal Vs. Union of India (UOI)*, .

15. In my view, in order to appreciate the rival contentions raised before me the provisions of Sections 3(1)(da), 15 and 33 of the said Act of 1985 are required to be taken note of.

16. Section 3(1)(da) defines "date of finalisation of the duly audited accounts" as the date on which the audited accounts of the company are adopted at the annual general meeting of the company.

17. Section 15 of the said Act of 1985 contemplates reference to the Board. Sub-section (1) of Section 15 contemplates reference by the board of directors of the company where an industrial company has become a sick industrial company within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which such company has become a sick industrial company. Provided, however, the board of directors, for sufficient reasons, may make such reference even before such finalisation of the accounts when such board of directors forms the opinion that the company has become a sick industrial company. Such reference is to be made within sixty days after the board of directors has formed such opinion. Under Sub-section (2) of Section 15, without prejudice to the provisions of Sub-section (1) of Section 15, the Central

Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of the said Act of 1985, a sick industrial company make a reference in respect of such company to the Board.

18. Sub-section (1) of Section 33 of the said Act contemplates that whoever violates the provisions of the said Act or any scheme, or any order of the Board, or the Appellate Authority and whoever makes a false statement or gives false evidence to the Board or the Appellate Authority, shall be punishable with simple imprisonment for a term which may extend to three years and shall, also, be liable to fine.

19. Sub-section (2) of Section 33 of the said Act, however, stipulates that no court shall take cognizance of any offence under the said Sub-section (1) of Section 33 except on a complaint in writing of the Secretary or any such other officer of the Board or the Appellate Authority or any such officer of an operating agency as may be authorised in this behalf by the Board or the Appellate Authority.

20. Therefore, a reference can be made to the Board, under Sub-section (2) of Section 15, by certain authorities referred to in the said section even beyond the stipulated period referred to in Sub-section (1) of Section 15 of the said Act.

21. In this connection Mr. Mukherjee profitably cites an unreported decision dated September 19, 1989 of Suhas Chandra Sen, J. (as His Lordship then was) in matter No. 6057 of 1988 (Scinclaires Hotels and Transportation Limited v. Company Law Board and Ors.). Suhas Chandra Sen, J. interpreted the provisions of Sub-section (4) of Section 22A of the Securities Contracts (Regulation) Act, 1956. The said Sub-section (4) of Section 22A of the said Act of 1956 laid down the procedure that was to be followed by a company after the instruments of transfer were lodged with it and, also, prescribed a time limit for taking steps for the said purpose. It was, inter alia, provided that if the company decided not to register a transfer, it was to make a reference to the Company Law Board and forward copies of such reference to the transferrer and the transferee. Such reference was to be made within a period of two months from the date of lodgment of transfer application. The Company Law Board, in the aforesaid case, held that reference, which was not made to the Company Law Board within the stipulated period of two months from the date of lodgment of transfer application, was barred by limitation.

22. Suhas Chandra Sen, J., in the aforesaid unreported decision, held as under

"In my view, the Company Law Board fell into an error in holding that some of the References were barred by limitation. Sub-section 4 of Section 22A has imposed a time limit within which a company has to do any one of the three things mentioned in Clauses (a), (b) and (c) of sub-section 4 of Section 22A. It does not impose any time limit for initiation of any proceeding like making an

application or preferring an appeal. On the contrary, it prescribes a period within which the company must do any of the three things open to it u/s 22A(4) after lodgment of the shares and the transfer documents. The steps that are required to be taken by a company under Sub-section (4) of Section 22A are to be completed within two months. The time limit is for completion of proceedings by the company and not for initiation of any proceeding."

The construction suggested by the respondents which found favour with the Company Law Board will lead to absurdity. If in a case where registration is refused on the ground of violation of any law, merely because there was delay in making the reference, the Company Law Board cannot direct the registration to be granted because the reference was made beyond the period of limitation. Similarly, if there is any injunction of any Court of Law restraining any party from transferring any share, the application for registration of transfer cannot be allowed by any company. If there is unexplained delay in making of the reference by the company, can the Company Law Board direct the registration to be granted because of the delay? In my view, such construction would lead to absurdity and must be avoided."

23. My reading of the provisions of the said Act of 1985 is that the time limit has been prescribed under Sub-section (1) of Section 15 of the said Act of 1985 to ensure that the board of directors of such company acts speedily. If there has been any delay, the directors/the company may be penalised, but the reference cannot be rejected as time barred. The Board does not become powerless to determine measures, which shall be adopted in respect of a sick industrial company even if the reference is made to the Board after the stipulated period of time. The statute does not prescribe rejection of a reference as time barred. The Court will, also, not readily read words, which are not there and introduction of which will restrict the rights of persons for whose benefit the statute is intended.

I, accordingly, set aside the order dated September 30, 2003 passed by the Board rejecting the reference as time barred and direct the Board to consider the reference in accordance with law as early as possible.

The writ application is, thus, allowed.

There will be no order as to costs.

Urgent Xerox certified copies of this order, if applied for, are to be supplied to the parties within seven days from the date of making requisitions for such copies.